

[Filed 10-14-08, 4:16 PM]

IN THE DISTRICT COURT IN AND FOR POLK COUNTY

DALLAS PORK, LLC, and LINCOLN
1 PORK, LLC,

Petitioners,

vs.

STATE OF IOWA, ex rel., IOWA
ENVIRONMENTAL PROTECTION
COMMISSION and the IOWA
DEPARTMENT OF NATURAL
RESOURCES,

Respondents.

NO.

CV 7404

**CONSENT ORDER,
JUDGMENT AND DECREE**

FILED
POLK COUNTY IA
OCT 14 PM 4:16
CLERK DISTRICT COURT

NOW on this 14th day of October, 2008, the Court is presented with the petitioner's petition seeking relief pursuant to Iowa Code section 17A.19. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action, and the parties consent to the entry of this Consent Order, Judgment and Decree.
2. Petitioners filed this action seeking judicial review of decisions by the Iowa Environmental Protection Commission at its August 19, 2008, meeting, denying permits for the construction of confinement feeding operations in Dallas County, Iowa. The decisions were the result of an appeal by the Dallas County Board of Supervisors of the Iowa Department of Natural Resources' prior notice of intent to issue the permits.
3. The petitioners previously agreed that land application of manure from these confinement feeding operations, if approved, would be by injecting or incorporating the manure into the soil and not surface applied. The petitioners have now agreed to the following additional

permit conditions:

1. All tile line intakes located within any fields used for land application of manure shall prior to application be sleeved with PVC piping or similar non-permeable barrier. The sleeves shall remain in place for at least three days after the application is completed for each such field.
2. All water wells located within any fields used for land application of manure shall prior to application be permanently plugged as provided in 567 Iowa Admin. Code chapter 39.
3. Land application of manure shall not be on frozen or snow-covered ground, except in the case of an emergency and IDNR Field Office No. 5 is first consulted regarding measures to limit the likelihood of manure runoff, or as otherwise authorized by a rule adopted subsequent to issuance of this permit.
4. Manure shall not be land applied during wet periods of runoff. In determining appropriate application timing, the person land-applying the manure shall consider the soil moisture as measured, the planned application rate, and anticipated precipitation events.
5. Prior to land application, manure from deep pits shall be sampled and analyzed for total kjeldahl nitrogen and total phosphorus and application rates shall be adjusted accordingly to comply with the manure management plan.
6. Land application of manure shall be according to the nutrient application rates of nitrogen and the Iowa phosphorus index.
7. A licensed professional engineer, who shall be retained on a consulting basis and not directly employed by the applicant as an employee, shall submit to the department a certification that the engineer supervised construction of the manure storage structures during critical points of construction with regard to concrete pouring and rebar placement, inspected the construction after completion and before commencement of operation, and that construction was in accordance with the drainage tile removal standards of 567 Iowa Admin. Code 65.15(1), along with a report of findings and actions taken to comply with the tile removal standards.
8. Prior to the first land application, an emergency response plan shall be developed and submitted to IDNR Field Office No. 5. The emergency response plan shall identify procedures and contacts for responding to, for example, spills and/or discharges of manure from the facility or land application sites. Copies of the emergency response plan shall be maintained at the facility and provided to persons involved in land applying manure.

9. The IDNR Field Office No. 5 shall be given at least 24 hours advance notice that manure will be land applied, the planned location of the manure application, and the name and phone number of the person or firm responsible for such manure application, except that legal holidays, or the Friday after Thanksgiving, shall not be counted as part of the 24 hours advance notice. For manure application at anytime on weekends or Monday mornings before noon, notice shall be given to the field office by noon on the preceding Friday, except that legal holidays, or the Friday after Thanksgiving, shall not be counted as part of the 24 hours advance notice.
10. Two rows of trees with each row being thirty (30) feet apart shall be planted and maintained with one row each of Austree (or similar fast-growing tree if Austree is not available) and Spruce. Excepting driveways and other access requirements, each tree shall be twelve (12) feet apart. The rows shall be planted at the following locations:
 - Lincoln 1 Pork: Along the south (Highway F31) adjacent to the facility, and along the north and west sides of the facility
 - Dallas Pork: Along the north and south sides of the facility
11. At the Lincoln 1 Pork site, one grass buffer ten (10) feet wide and five hundred (500) feet long shall be planted and maintained at the low runoff point in the northeast field along E Avenue.

4. The parties have entered into this Consent Order, Judgment and Decree, without any further admission of fact or of law, for the sole purpose of resolving this matter without further litigation.

5. The Dallas County Attorney has advised the respondents' attorney that the Board of Supervisors for Dallas County has no objection to entry of this Consent Order, Judgment and Decree.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

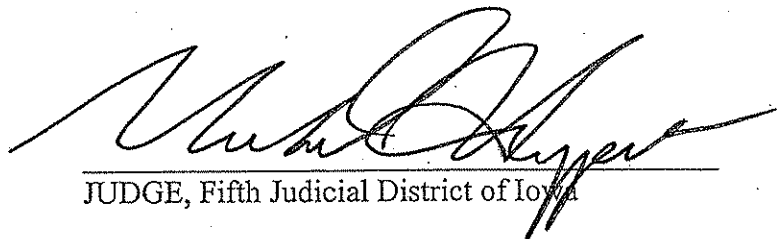
1. The Iowa Department of Natural Resources shall immediately issue to Dallas Pork, LLC, a construction permit in the form attached as Exhibit A, authorizing with conditions

construction of the confinement feeding operation structures described in the permit. Dallas Pork, LLC, consents to issuance of the permit and waives any appeal.

2. The Iowa Department of Natural Resources shall immediately issue to Lincoln 1 Pork, LLC, a construction permit in the form attached as Exhibit B, authorizing with conditions construction of the confinement feeding operation structures described in the permit. Lincoln 1 Pork, LLC, consents to issuance of the permit and waives any appeal.

3. Entry of this Consent Order, Judgment and Decree, constitutes full and complete settlement of the petitioners' claims in this action.

4. Petitioners waive reimbursement of Court costs and said costs are deemed satisfied of record.



JUDGE, Fifth Judicial District of Iowa

Approved as to form:

THOMAS J. MILLER
Attorney General of Iowa



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ATTORNEYS FOR RESPONDENTS

DALLAS PORK, LLC

By: _____
ROBERT MANNING, JR., Manager

LINCOLN 1 PORK, LLC

By: _____
ROBERT MANNING, JR., Manager

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Attorney General of Iowa

DALLAS PORK, LLC

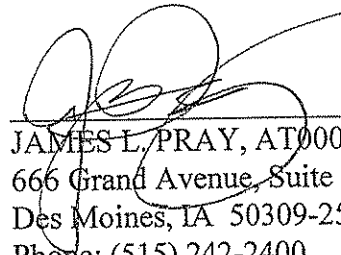
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LINCOLN 1 PORK, LLC

By: 
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BROWN, WINICK, GRAVES, GROSS,
BASKERVILLE AND SCHOENEBAUM,
P.L.C.

A handwritten signature in black ink, appearing to read 'James L. Pray', is written over a horizontal line.

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